

9-1-2002

Bitterroot River Prot. Ass'n v. Bitterroot Conservation Dist., 45 P.3d 24 (Mont. 2002)

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James Siegesmund, Court Report, Bitterroot River Prot. Ass'n v. Bitterroot Conservation Dist., 45 P.3d 24 (Mont. 2002), 6 U. Denv. Water L. Rev. 239 (2002).

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allocate the costs among the landowners who benefit from the drainage. Landowners argued this process was not available to them, as a matter of law, because the statute required the costs of repair not exceed the benefits. Landowners also asserted the costs of present-day repairs would exceed the determination of benefits in 1909 and that no redetermination had been calculated. While the court decided this is true under the statute, it also noted an alternate provision under the statute that authorizes repairs if the drainage authority determines the repairs are necessary for the best interests of the property owners. This section did not use a cost-versus-benefit analysis.

The court held the petition for repair of the ditch would not be futile and that the Landowners had failed to show evidence the Watershed District made a policy decision against redetermination, or a final decision on whether to repair the ditch. Landowners may petition for repair of the ditch.

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MONTANA

Bitterroot River Prot. Ass'n v. Bitterroot Conservation Dist., 45 P.3d 24 (Mont. 2002) (holding an authorized conservation district had jurisdiction to determine whether a body of water was a stream entitled to the protections of the Natural Streambed and Land Preservation Act of 1975).

The Bitterroot Conservation District (“BCD”) served as the conservation district for Ravalli County, Montana. Under the Natural Streambed and Land Preservation Act of 1975 (“Streambed Preservation Act”), BCD, as the authorized conservation district, was responsible for issuing permits to anyone who planned to alter or modify a perennial-flowing stream in Ravalli County. The Bitterroot River Protection Association (“BRPA”) was a private conservation group and it filed for a writ of prohibition in Montana’s District Court. BRPA wanted to stop BCD’s determination of whether a slough was a “stream” as defined in the Streambed Preservation Act. The Montana District Court originally heard the case. Upon the district court’s denial of the writ, BRPA filed for a writ of prohibition in the Supreme Court of Montana.

In July 1995, Brian Monta requested a portage permit from BCD for the Mitchell Slough (“slough”). Mr. Monta planned to alter or modify the slough, and he needed a permit because BCD considered the slough a body of water in Ravalli County. However, a question arose as to whether the slough constituted a perennial-flowing stream and thus subject to BCD’s jurisdiction under the Streambed Preservation Act. BCD announced it would determine the slough’s

status following a public hearing on the issue. After the public hearing, but before BCD classified the slough, the Bitterroot River Protection Association ("BRPA") filed its suit requesting a writ of prohibition.

As the party requesting the writ, BRPA had the burden of demonstrating that BCD's proceedings to determine the status of the slough were clearly unlawful. The district court held that BRPA failed to meet this burden, and declined to issue the writ and the BRPA appealed to the Supreme Court of Montana.

The Streambed Preservation Act defines a stream, but it does not explicitly give any entity the power to classify bodies of water as streams. Since the Streambed Preservation Act applies only to streams, such classification is necessary. The courts generally allowed government agencies to decide whether an agency had jurisdiction over a particular issue. However, courts may interfere with that decision only when three conditions are met: (1) the agency's jurisdiction is plainly lacking; (2) there is clear evidence that requiring a party to exhaust its administrative remedies will result in irreparable injury; and (3) the agency's special expertise will be of no help in determining jurisdiction. The court found that none of these conditions were present in this case.

BCD did not plainly lack jurisdiction. The court acknowledged that the Streambed Preservation Act gave BCD the explicit power of declining its protection to certain streams. If the legislature had given any entity other than BCD the classification power, BCD could effectively veto that entity's decision. The court found that it made sense for the classification power to be within the BCD's jurisdiction. Furthermore, the initial BCD classification did not result in irreparable injury—judicial review, for example—would still be available if BRPA did not agree with BCD's decision. Finally, the court found that BCD's expertise would be useful in making this type of classification. The legislature intended the Streambed Preservation Act to protect streams with significant aquatic and riparian attributes in need of protection; BCD's expertise made it better equipped than the court to determine which streams possessed those attributes. Therefore, the court had no reason to interfere with BCD's determination of its jurisdiction over the initial classification of the slough.

BRPA also argued that if the slough did not qualify as a stream under the Streambed Preservation Act, it would be excluded from the constitutional guarantee of citizen access to surface waters as a ditch. BRPA argued that this threat to citizens' constitutional rights made a judicial classification of the slough's status more appropriate. The court rejected this argument, holding that no dichotomy existed between streams (as the term is used in the Streambed Preservation Act) and ditches (in the constitutional sense).

The court denied BRPA's petition for a writ of prohibition.

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